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BY ECF

Hon. P. Kevin Castel
United States District Court for the
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: *Engel v. Third Avenue Management, LLC, et al.*, No. 16-cv-1118

Dear Judge Castel:

We represent defendants William E. Chapman, II, Lucinda Franks, Edward J. Kaier, Patrick Reinkemeyer, Eric P. Rakowski, Martin Shubik and Charles C. Walden, who are the independent members of the Board of Trustees of the Third Avenue Trust (the "Trust"), in the above-captioned matter. We also represent the Trust, which is named as a nominal defendant. We respectfully write, after consultation with counsel for all defendants and in advance of the pre-motion conference scheduled for tomorrow before Your Honor, to withdraw defendants' request in their May 9, 2016 pre-motion conference letter (D.E. 59) to bifurcate briefing on defendants' proposed motion to dismiss.

In the interests of efficiency, Defendants had requested to move to dismiss first pursuant to Fed. R. Civ. P. 12(b)(6) and 23.1 on the grounds that Plaintiff had failed to make a pre-suit demand and failed to demonstrate that such demand would have been futile. Bifurcating the briefing would have allowed the Court to decide the issue of demand futility before all the named defendants and the Court expended time and resources on multiple additional 12(b)(6) grounds for dismissal of the Amended Complaint.

Because of developments in a related litigation in the Delaware Court of Chancery, bifurcating briefing in this fashion is no longer judicially efficient. Your Honor may recall that on March 4, 2016, Avi Wagner, a purported shareholder, asked this Court by letter to stay this action while he pursued inspection of the Trust's books and records. D.E. 28. On March 22, 2016, Your Honor denied Mr. Wagner's motion to stay and instructed all proposed intervenors to submit proposed pleadings and papers in support of intervention by March 31, 2016. D.E. 47. Mr. Wagner instead brought a new action in the Court of Chancery on April 8, 2016, titled *Avi Wagner*

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v. Third Avenue Management LLC, et al. On May 5, 2016, we and the other defendants in that action proposed briefing first the issue of whether Mr. Wagner's suit should be dismissed or stayed in deference to the first-filed action in New York, and holding in abeyance any briefing on all other grounds to dismiss. On May 20, 2016, the Court of Chancery convened a telephonic hearing on that issue, a copy of the transcript of which is attached as Exhibit A. At the hearing, and in a subsequent order received by the parties today and attached as Exhibit B, the Court of Chancery denied the defendants' request and required the defendants to brief all grounds for dismissal at once. Defendants' opening papers in the Delaware action are due on June 10, 2016.

As a result of the Court of Chancery's decision, any efficiencies in bifurcating briefing in this action have effectively been negated, and the defendants are prepared to proceed with briefing on all grounds for dismissal of Plaintiff Engel's Amended Complaint – which closely mirrors Mr. Wagner's complaint and, as a result, presents substantially similar grounds for dismissal.

We look forward to discussing with Your Honor at tomorrow's pre-motion conference this and all other issues raised in the parties' pre-motion letters.

Respectfully submitted,

/s/ Robert A. Skinner

Robert A. Skinner

cc: All Counsel (by ECF)

Enclosures